

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

v.

TORRANCE KENDALL SURLES

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2:07-cr-142-MHT

**RESPONSE TO DEFENDANT'S MOTION TO REOPEN
DETENTION HEARING**

COMES NOW the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and files the instant Response to Defendant's Motion to Reopen the Detention Hearing as follows:

1. While the Government is aware of the Defendant's polygraph results, the Government maintains that on July 6, 2007, the Defendant made a veiled threat against ATF Special Agent Sybil McNeill. At the time of the submission of the instant response, the Government has not been provided a curriculum vitae of the polygrapher, the government has no idea if or how the polygrapher was taught to administer polygraphs, if the polygrapher is qualified to administer the polygraph or how many polygraphs he has administered. Thus, at this time the Government can give the polygraph results no credence.

2. However, even if the Court were to believe the polygraph results and disregard the testimony regarding the threat, the Defendant should nevertheless be detained. As the Court is aware, the Defendant sold crack cocaine to an undercover officer on May 24, 2007 and on May 30, 2007. During the May 30, 2007 sale, the Defendant sold 7.9 grams of crack

cocaine. On July 6, 2007, after these two sales, Agents Sybil McNeill and Brett Hamilton showed the Defendant the video tape of his selling the crack cocaine to the undercover officer. After viewing this tape, but on the same date of July 6, 2007, the defendant used cocaine. (*See*, polygrapher report p. 1, “Mr. Surles states that he had been consuming alcohol and cocaine that day but denied that he was ‘high’.”) Finally, on July 7, 2007, when Agent Hamilton met with the Defendant to execute the arrest, the Defendant was in possession of a small amount of cocaine.

3. Pursuant to Title 18, United States Code, Section 3142(e), “Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act...” Based on the Defendant’s sale of 7.9 grams of crack cocaine on May 30, 2007 to an undercover officer, the defendant is now subject to statutory minimum sentence five (5) years incarceration and a statutory maximum of forty (40) years incarceration. Clearly the rebuttable presumption applies in this case.

4. Further, it cannot be ignored that after the Defendant was confronted by federal agents with his video-taped drug dealing, he continued to use and/or sell drugs. As the Court noted in its original detention Order, “The multiple sales of narcotics and continued flagrant disregard for the narcotics laws prove to the Court the defendant is a danger to the community which cannot satisfactorily be mitigated short of the defendant’s incarceration pending trial.” (Doc. 9, p. 2)

5. Based on the forgoing, even if the Court disregards any threat on a federal agent and her family, this Defendant should remain incarcerated pending trial and the motion to reopen the detention hearing should be denied.

Respectfully submitted this the 9th day of October, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Kevin Butler, Esq.

Respectfully submitted,

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